Academician Miodrag SIMOVIĆ, PhD*
Constitutional Court of Bosnia and Herzegovina, Judge
Faculty of Law of Banja Luka University, Full Professor
Mile ŠIKMAN, PhD**
Ministry of Internal Affairs of the Republika Srpska
Faculty of Law of Banja Luka University, Assistant Professor

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EFFICIENCY OF CRIMINAL PROCEEDINGS – BETWEEN EXPECTATIONS AND REALITY

In the light of current debates on modern criminal proceedings, the question of its efficiency has a special place. This is quite realistic, as the modern criminal procedure is expected to be efficient, i.e., to resolve a criminal matter in an optimal timeframe, in a legal manner. This is not just a matter of public opinion, but also a general one, because citizens rightfully expect efficient criminal justice. In this sense, the legislator makes appropriate solutions (e.g. prescribes criminal procedural standards, introduces new, shortened procedures, approaches to organization of judiciary, and regulates interrelated relations between criminal prosecution subjects, etc.). So the legislator in Bosnia and Herzegovina tried to create conditions for the criminal proceedings to be efficient. A new investigation concept (prosecution investigation) was introduced, new criminal proceedings instruments were introduced (for example, guilty plea agreement, special investigative actions, etc.), specialization of some judicial bodies was carried out in the fight against certain forms of crime (for example, the Special Department for Combating Corruption, Organized and the Most Difficult Forms of Economic Crimes established by the Anti-Corruption Law, Organized and the Most Difficult Forms of Economic Crime in the Republika Srpska), improved

* e-mail: vlado_s@blic.net
** e-mail: milesikman79@gmail.com

mutual relations between criminal proceedings subjects, especially Prosecutor's Office and Police, etc. The second question is the question of their adequacy and efficiency.

Here we face the reality. Not only that the long-term duration of criminal proceedings is inadequate to the criminal reaction, but it also brings into question fundamental rights such as the right to a fair trial within a reasonable time. In addition, criminal proceedings often end with acquitting verdicts, but not because of the established truth, but because such violations of regulations that lead to such violations have been committed. Likewise, the question arises of the achieving of the purpose of punishment in cases of termination of criminal proceedings by pleading guilty, guilty plea agreement or by a criminal warrant. Although the abovementioned shortened proceedings are characterized by conduct efficiency, they are very often in disagreement with their purpose, especially in terms of determining of criminal sanctions.

Key words: criminal proceedings, court, prosecutor, suspect, accused, efficiency, adequacy.

1. Introduction

Criminal proceedings are proceedings in which the state, through its state organs and some other persons, takes a whole line of activities in an appropriate manner to change provisions of substantive criminal law if there is doubt a criminal offence has been committed in a concrete case (Simović, Simović, 2016: 25). Accordingly, this is a set of criminal proceedings conducts of procedural subjects: the court and the parties (the prosecutor and the suspect or the accused), regulated by the procedural rules and directed to obtain a judicial decision after having known about the criminal offense or decisions on other procedural relations related to the criminal offense, and which require the participation and decision of the court (Vasiljević, 1981: 5). As such, the criminal proceedings go through several stages, from investigation and confirmation of the indictment (preliminary hearing), to the final hearing of the criminal matter at the main proceedings (the main hearing, issuance and publication of the judgment, proceedings following legal remedies) (Simović, Simović, 2016: 27).

The separation of the preliminary and the main proceedings is not an obstacle to the uniqueness of the criminal proceedings, so the case files of the preliminary hearing may also be used in the main hearing (Simović, Simović, 2014: 17). It is also in line with legal standards of the European Court of Human Rights (hereinafter: the European Court) which may examine the completeness and efficiency

of the investigation in the context of control of the compliance with the state's procedural obligation to efficiently prosecute and ensure the detection and punishment of offenders, under Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms1 (hereinafter: the European Convention) (Simović, Simović, 2014: 21). For this reason, the criminal proceeding is understood as the totality of all the activities undertaken by authorized entities, from the moment of finding out about the criminal offense (investigation) until the adoption of a final judicial verdict.

Criminal proceedings has to organized to ensure a fair trial, which means that the proceedings have to be fair, i.e. to be conducted within „a reasonable time limit" and comply with specific requirements referring to consideration of dispute and release of judgment. This right is directly connected with efficiency of criminal proceedings. Efficiency of criminal proceedings, as such, understands its qualitative component (legality of conduct of criminal proceedings and making of a just and lawful court decision) and quantitative component (elaps of time from initiation of criminal proceedings until a valid court decision) (Bejatović, 2010: 189). Realization of planned activities and planned results should also be added to this relation, which would correspond to the concept of efficiency of criminal proceedings. Actually, determination of efficiency would not have sense without determination of effectiveness, because it point to rationality of use of resouces for achievement of a goal (Radlovački, Kamberović, Radaković, 2008: 7-12.; Jager, Šugman Stubbs, 2017: 355-370)[2]. Therefore, as efficient criminal proceedings may only be considered a proceeding in which, in a realistically short time elaps from its intitation until its completion and with lots of respect for legality of its conduct, just and lawful final court decision is issued (Bejatović, 2015a: 28). Those are the cases in which criminal proceedings have not been prolonged without justification, in which the parties has a realistic possibility to achieve their rights, where a specific significance has a right to defense of accused, but also duties when the case is about official participants of criminal proceedings (Škulić, 2015: 41-75). In a close relationship is also the principle of a process economy that consists of imposing of criminal procedure so that with the shortest possible loss of time, with as little work as possible and with as little

1 The Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, Rome, Counicil of Europe. Available at internet6 web site https://www.echr.coe.int/Documents/Convention_ENG.pdf, accessed on 3 October 2018.

2 Otherwise, it is commonly known that the concepts of efficiency and effectiveness are economic terms and are used primarily as indicators in economic processes. It is therefore necessary to consider how efficiency assessment models (determining the amount of resources spent to achieve the goals) and effectiveness (determining the level to which the process goals are achieved) can be applied in criminal and legal sciences.

expense as possible, the immediate goal of each process is achieved, as well as the ultimate goal of obtaining a fair and just verdict (Vasiljević, 1981: 253). Thus, the efficiency of criminal proceedings is also the expression of the right to a fair trial, according to which anyone charged with a criminal offense has the right to have his case examined within a reasonable time by a court. This is a standard that is an important feature at all stages of criminal proceedings, such as modern science of criminal procedural law, as well as criminal procedural legislation, i.e. criminal policy in general (Bejatović, 2008: 3–40.; Đurić, 2008: 9–39; Radulović, 2011: 125-137).

The efficiency of the criminal proceedings has been regulated by the legislator in Bosnia and Herzegovina by prescribing the situations in which the proceedings can be completed at a certain stage, as well as by introducing new forms of shortened procedure (Simović, 2009: 195-223). Simplified forms of the way of dealing with criminal matters are one of the most important instruments of the efficiency of criminal proceedings (Bejatović, 2009a: 77-105). The justification for the parallel existence of several types of criminal proceedings in the specific criminal legislation is based upon the heterogeneous structure of crime - the heterogeneous structure of criminal offenses and their perpetrators (Bejatović, 2013: 11-31). As such, they are intended, as a rule, to the trial for more simple criminal cases (less severe and more severe criminal offenses). If this is added to the fact that this group of criminal offenses in the overall structure of crime occupies a significant place, then the importance of these proceedings becomes even more intensive. Additionally, when it comes to the criminal-political justification of these proceedings, it is necessary to have another fact in mind, and that is that these proceedings, by virtue of their practical application, by unburdening of the courts, also give a direct contribution to increase of the quality of trials for more severe criminal cases, since the courts have more space for more severe and more complicated criminal cases (Bejatović, 2013: 12).

The second question is the applicability of the aforementioned norms in the court case-law. A question arises here, quite justifiably, when a fair trial within a reasonable time has been violated. On the other hand, this is not formal question, but it is a factual question that is solved in each particular case depending on the gravity of the criminal offense and other features of the particular criminal case and of taking into account the positions of the European Court of Human Rights regarding this matter (See: Simović, 2012: 37–68). In addition, it is indisputable that shortened forms of proceedings, particularly for less severe criminal offenses, criminal proceedings would have more dynamic character with a shortened deadline for their finalization. This would, theoretically, enable the preparation and conduct of the main proceedings for more severe criminal offenses,

which cannot be completed in the aforementioned manner, but require the conduct of all stages of the main proceedings. Here too, we can ask the question of the practical applicability of shortened procedures, i.e. the realization of complete and clear purpose of punishment in this way, with the simultaneous full guarantee of human rights and freedoms.

2. The right to a fair trial within a reasonable time

The right of participants in criminal proceedings to have the court decided on his rights and obligations within the shortest period of time without unnecessary stalling, bring the efficiency of the criminal proceedings and the right to a fair trial within a reasonable time into direct connection. This even more, since the matter is about two mutually and tightly connected components: the promptness of conducts and lawful solution of criminal matter (Bejatović, 2000: 145-155). In doing so, we do not look at efficiency in the simplified form of the promptness of criminal proceedings, but we take into account its qualitative and quantitative component. On the other hand, the right to a trial within a reasonable time is included in the fundamental human rights (Đurđić, 2013: 56-66) as one of the aspects of the right to a fair trial prescribed under the European Convention. It is explicitly listed (Omejec, 2008) in Article 6 of the European Convention as such. The European Court of Human Rights, in that regard, took the position by establishing that any unjustified delay was contrary to the right to a fair trial[3], whereby the States are obliged to ensure that the accused does not have to be under charges for a long time and that the charge is specific[4]. Conduct of the proceedings within a reasonable time is of fundamental importance for the entire legal system, because any unnecessary delay often leads, *de facto*, to the deprivation of the individual's rights and to the loss of efficiency and trust in the legal system (Simović, 2015: 9-33).

The Constitution of Bosnia and Herzegovina in Article II/3(e) prescribes the right to a fair trial, i.e. the right to a fair hearing in civil or criminal matters, and other rights relating to criminal proceedings. Stated provision is elaborated in the Criminal Procedure Code of Bosnia and Herzegovina[5] (hereinafter: the Criminal Procedure Code) and presents the content of the right to a trial without any delay (Article 13) (Simović, Simović, 2016: 30).

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3 *Cazanovas v. France*, No. 441/1990, 7 July 1993.

4 *Wemhoff v. Germany*, No. 2122/64, 27 June 1968.

5 Criminal Procedure Law of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07,

This right is also provided by prescribing deadlines in which a court has to make a decision or perform another procedural action, most often in cases where the suspect, or the accused is in custody (e.g., Articles 134-138), and sometimes in general (Article 225, Article 233 paragraph 2, Article 367, etc.). In this regard, it is stipulated that: „If the investigation is not completed within six months of the issuance of an investigation order, the necessary measures shall be taken to complete the investigation by the Collegiate Body of Prosecution" (Article 225 paragraph 3).

When deciding on the indictment, the preliminary hearing judge is obliged to „examine immediately upon receipt of the indictment whether the court is competent, whether there are any circumstances under Article 224 paragraph (1) t. d) of this Law, and whether the indictment is duly made in accordance with Article 227 of this Law)" (Article 228 paragraph 1). The preliminary hearing judge can either confirm or reject all or some counts of the indictment within eight days, and in complex cases within 15 days of receipt of the indictment (Article 228 paragraph 2). The deadline for submitting an indictment to the accused who is at liberty is - immediately, without delay, and if he is detained, within 24 hours upon confirmation of the indictment. (Article 228 paragraph 5). The main hearing shall be scheduled within 30 days from the date of the plea. This deadline may be extended for another 30 days (Article 229 paragraph 4). The deadlines are specified in the case of a plea agreement as well, so if the Court rejects a plea agreement, the main hearing must be scheduled within 30 days (Article 231 paragraph 8) (Compare: Sijerčić-Čolić, Hadžiomeragić, Jurčević, Kaurinović, Simović, 2005: 72-73). The applicability of these provisions shall be elaborated in the below text.

In several decisions the Constitutional Court of Bosnia and Herzegovina found violation of the right to a fair trial under Article II/3e) of the Constitution of BiH and Article 6 of the European Court of Human Rights, and fundamental freedoms referring to the right to a decision within a reasonable time. In relation to this, and on the basis of the Rules of the Constitutional Court[6], the competent court was ordered to promptly complete the proceedings, and to inform the Constitutional Court, within 90 days from the date of submission of the decision, of the measures taken to enforce this decision (Radolović, 2008: 277−315). Therefore, the right to a trial within a reasonable time exists both in the interest of persons whose rights and obligations are deliberated upon, or against whom a certain proceedings are conducted against (subjective component), and in the interest of legal security and the rule of law in general (objective component)

15/08, 58/08, 12/09, 16/09, 93/09 and 72/13.

6 Rules of the Constitutional Court – Revised text, "Official Gazette of Bosnia and Herzegovina", No. 94/14.

(Bejatović, 2015b: 9-33). Accordingly, it is in the interest of all the participants to the proceedings, including the accused[7].

When assessing the violation of this right, it is necessary previously to determine the beginning of relevant period, its end, as well as to assess the length of time. The easiest way to determine whether the proceedings were concluded within reasonable time is to establish exact period of time (Simović, 2015: 67). In criminal matters, deadline for assessment of reasonableness of the length of proceedings, in principle, starts running from the moment the accused was subjected to "accusation", and ends upon valid termination of the proceedings (Carić, 2015: 34-48). Anyways, it is necessary that each case is assessed based on its own circumstances, and some general instructions are very difficult to establish. The European Court of Human Rights generally uses standard formula to define its approach to assessment of duration of criminal proceedings. Reasonable duration of the proceedings should be assessed in the light of a particular circumstances of a case, taking into account criteria presented in the case-law of the Court, and especially the complexity of a case, behavior of the plaintiff, and behavior of competent authorities[8]. In addition, it is also important to take into account what the applicant risks in that dispute[9]. Accordingly, factors for assessment of efficiency of criminal proceedings include assessment of legal and factual issues of a particular case, behavior of the plaintiff, behavior of court and administrative organs of the defendant state and significance the issue discussed before a court has for the plaintiff (Carić, 2015: 35).

3. Assessment of efficiency of criminal proceedings

To speak about the assessment of efficiency of social phenomenon like criminal proceedings, its goals should first be defined, and they have to be clear and measurable (Jager, Šugman Stubbs, 2017: 359). So, the general goal would be to enable application of substantive criminal law to a concrete case, i.e. to establish

7 Although the accused cannot be expected to contribute to accelerate the proceedings that could result in his conviction, it could be in his interest to remove the uncertainty of conviction. Bejatović, S. (2015b). *op.cit*., pg. 14.

8 For example, see case-law of the European Court of Human Rights: *Buchholz v. Germany*, No. 7759/77, 6 May 1981.; *König v. Germany*, No. 6232/73, 28 June 1978.; *Zimmermann & Steiner v. Switzerland*, No. 8737/79, 13 July 1983.; *Mikulić v. Croatia*, No. 53176/99, 7 Febrary 2002.; *Mamič v. Slovenia*, No. 75778/02, 27 June 2006.; *Pelissier and Sassi v. France* (GC), No. 25444/94, 999−II.; *Yağ ci and Sargin v. Turkey, No. 16419/90 and 16426/90, 8 June 1995.; Gelli v. Italy, No. 37752/97, 19 October 1999.; Vachev v. Bulgaria*, No. 42987/98, 8 July 2004.; *De Clerck v. Belgium*, No. 34316/02, 25 September 2007.

9 *Philis v. Greece*, No. 2, 27 June 1997.

by a court decision a criminal offense was commited, whther it was committed by the accused, whether the accused may be imposed a criminal sanction (Simović, Simović, 2016: 35), while special goals refer to individual states and phases of the proceedings, which fit into a general goal (Simović, Simović, 2016: 35). Accordingly, the goal is to achieve principles of legality, so that noone innocent would be convicted, and to impose on the perpetrator of the criminal offense criminal sanction under conditions prescribed in the Criminal Code of Bosnia and Herzegovina[10] (hereinafter: the Criminal Code) and other laws of Bosnia and Herzegovina prescribing criminal offenses, in a legally prescribed proceedings (Article 2 paragraph 2). In that sense, it is important that criminal proceedings do not last more than it is objectively needed, and that its duration in each concrete case is a matter of factual and unique circumstances (Škulić, Ilić, 2012: 23). Accordingly, a quality court decision and impartial consideration of all the issues (factual and legal) are integral parts of such understood efficiency (Filipović, 2017: 6).

Factors of the effectiveness of criminal proceedings, such as the facts on which the termination of a criminal matter within specific time depends, on one hand, in a legitimate and just manner, on the other hand, are the equivalent factors of both components (Bejatović, 2015a: 32). Nevertheless, it would be superficial to relate the efficiency of the criminal proceedings with the speed of its termination, only by taking into account criterion of trial within a reasonable time. Actually, the speed by itself is a relative category and should not be simplified identified with the efficiency of the criminal proceedings (Škulić, Ilić, 2012: 23). It is perfectly clear that prompt and efficient criminal proceedings are not the same (Škulić, Ilić, 2012: 23). In these cases, it seems that the right of the suspect is excessively emphasized, and neglects the obligation of the state or the judiciary as a whole to complete the criminal matter within a certain time, without unnecessary delay. In fact, disturbance of balance between these principles leads to either the authoritarianism of rights (giving advantages to efficiency) or to protection of the society from crime (giving advantage to human rights and freedoms) (Radulović, 1997: 155-215). It is therefore justifiable to set up a request for respect for the rights and freedoms of the defendant, on the one hand, and for the completion of the criminal proceedings within a reasonable time, on the other (Kolaković-Bojović, 2013: 373-384).

Another important issue for assessing the efficiency of the criminal proceedings refers to the parties participating in it, as well as the time of action, in which it is possible to estimate their individual efficiency and the efficiency of

10 Criminal Code of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15.

the proceedgins as a whole. Namely, as criminal proceedings involve more than one parties undertaking various activities (each from their jurisdiction), these issues become relevant. In this respect, the actions of prosecution and the police are very important in the investigation, while the court has the primacy in the course of the main proceedings. At the same time, this is the question referring to the moment from which the criminal proceedings are considered to be initiated. Although there are different opinions here11, as criminal proceedings are composed of two stages (preliminary and main proceedings (Simović, Simović, 2016: 29)) in the criminal procedural legislation, taking of first activities in the previous stage is considered as the moment of initiation of the criminal proceedings.

Taking into account the above stated, in the most general sense, the assessment of the efficiency of the criminal proceedings can be observed through efficient legal norm and the efficiency of the criminal proceedings.

An efficient legal norm implies such a norm that enables its full applicability in practice, so the criminal matter would be resolved lawfully within an optimal timeframe. At the same time, the legal norm is legally efficient if, at the final instance, all its provisions are applied and enforced in a legally prescribed manner (Jager, Šugman Stubbs, 2017: 373). Only in situations when we have an adequate legal norm and its adequate application - we can speak about simultaneous preconditions of efficiency of a state reaction to crime (Bejatović, 2017a: 291-315). Assumptions for the realization of a process economy are ensured, firstly, by the law itself, by avoiding of unnecessary procedural forms, which slow down the proceedings and increase the costs. In addition to this, the legal norm, to have this function following its content, would have to be characterized by a high level of precision in the definition of certain legal terms and prescribing of precise requirements for the application of certain measures and institutes (Bejatović, 2017b: 450). Likewise, the efficiency of criminal proceedings, when it comes to legal norms, is characterized by stipulation of simplified forms of action12 (shortened proceedings).

It can be concluded that the trend in comparable legislation, including our country, prescribes the possibility of conclude the criminal proceedings without conducting the main trial, either through the confession of the suspect, guilty

11 According to the opinion of one group of authors as the beginning of criminal proceedings is considered the moment a particular opinion of the court is presented in relation to the indictment, while, according to the others, this moment is connected with the principle of accusation, and the beginning of the criminal proceedgins refers to filing of appropriate indictment act. See more details in: Škulić, 2009: 317.

12 In 2013 OSCE Mission in Serbia published on this topis a monography of group of authors under title *Simplified forms of conducts in criminal matters – Regional criminal and procedural legislations and experiences in application,* whose editors are Ivan Jovanović and Miroljub Stanis-

plea agreement or by a criminal order. Of course, it is necessary to take into account that the legal norm prescribing these possibilities is in accordance with the basic principles of criminal proceedings. In fact, each basic principle on which the establishment of regular criminal proceedings is based extends its validity to simplified forms of judgments in criminal matters if it is not limited or even abolished during the construction of a given procedural form (Đurđić, 2013: 65). Also, viewed from a normative point of view, efforts are made to speed up the preliminary criminal proceedings by expanding the principle of opportunity of criminal prosecution which allow the criminal prosecution bodies a higher rejection rata of criminal charges for minor crimes and thus to greater extent orientation of judicial bodies to more complex and more severe criminal cases (Bejatović, 2009b: 125-144). It should be emphasized here that the practical realization of the aforementioned request does not go beyond the lawfulness of the criminal proceedings or the threat to guaranteed rights and freedoms of the participants in the proceedings (Šikman, Bajičić, 2014: 285-310).

Efficiency of entities of criminal proceedings understands the organization of the judiciary and other entities participating in the criminal proceedings as well as their mutual relations. Given the complexity of the proceedings detecting and proving criminal offenses and the variety of measures and actions undertaken to that end, it is evident that it is a broad circle of entities whose activities affect their initiation, conduct and conclusion of criminal proceedings (Šikman, Bajičić, 2014: 295). There is no doubt that that the efficiency of criminal proceedings as a whole shall depend, to the most possible extent, on the efficiency of their actions (Bejatović, 2015a: 46).

In addition to the individual efficiency of the criminal proceedings, great importance for the efficiency of detection and proving of criminal offenses also has mutual relationship and cooperation of the process entities. This relationship, in order to serve the function of efficiency and adequacy of reaction to crime, must be a feature of the entire criminal proceeding, from its previous stage to the main stage of criminal proceedings. Thus, in the investigation, as the first stage of the preliminary proceedings, a professionally engaged relationship between the police, the prosecutor and the pre-trial judge, as well as with the defense counsel who can contribute to the efficiency of the criminal proceedings, must come to light. Furthermore, in view of the mutual relations between the criminal prosecution entities, their co-operation at the main hearing is of special

avljević. This monography has an extremely significant and actual problem of criminal procedural legislation of the countries in region (Serbia, BiH, Croatia, Macedonia, Slovenia and Monte Negro), and wider, as a topic.

value, which is particularly reflected not only to the duration of criminal proceedings within the boundaries necessary for objective and complete illumination and resolution of criminal matters, but also to the legality of the judicial decision (Bejatović, 2017a: 295). The circumstances of subjective nature, expressed through the expertise, engagement and motivation of the judicial functionaries in the work, should be added to the above (Bejatović, 2015a: 47).

4. Challenges of the efficiency of criminal proceedings

Given that we have accepted the view that the criminal proceedings are viewed as an entirety, including the preliminary and the main proceedings, and determined the efficiency factors of the criminal proceedings, then we can also talk about the challenges of the efficiency of criminal proceedings.

The first of them concerns the beginning of the investigation, which is *de facto* the beginning of the criminal proceedings as well. The investigation shall include activities undertaken by a prosecutor or an authorized official in accordance with the Criminal Procedure Code, including the collection and preservation of statements and evidences (Article 20 t.i) and shall commence if there are grounds for suspicion that a criminal offense has been committed (Article 216 p.1). Therefore, the formal requirement for initiating and conducting an investigation is the existence of a prosecutor's order, and the material requirement is existence of grounds for suspicion (Pivić, 2017: 9-45). While it would not be a problem to meet the formal requirement, because the order to conduct the investigation is a written act of the Prosecution with the law prescribed content, the other requirement is questionable in every sense. Namely, the ground for suspicion, as an indication or ground of suspicion, are the facts that point out to the existence of a criminal offense and the closer or further connection between that offense and a person, on the basis of which, more or less probably, it can be concluded whether a criminal offense was committed or not, what was the connection between certain person (persons) and the criminal offense, as well as other circumstances relevant to the clarification of criminal matter (Vodinelić, 1985: 188). It often only allows for a preliminary criminal differential diagnosis with regard to the existence of a criminal offense and a possible perpetrator, and is called "sufficient doubt" (Modly, Petrović, Korajlić, 2004: 64 i 65). It is clear that this is the lowest degree of probability, without any structure, which, through reasonable suspicion (higher and higher degree of probability), a provisional system of a certain quality, should grow into a completely new system of such quality

and quantity that excludes the possibility of any other interpretation of the factual background, which we call certainty (Šikman, 2010: 89-104).

In this regard, the key question is what is the level of facts on which the ground of suspicion is based on in relation to committed criminal offense and the perpetrator.[13] Certainly, it differs depending on the entity that takes the action. Thus, within its jurisdiction[14], the Police shall find out that the criminal offense has been committed and will report it to the Prosecutor, depending on the type and severity of the criminal offense, within the prescribed time limits. The report of criminal offense to the Prosecutor by a Police shall be mandatory only when the Police establishes grounds for suspicion that the criminal offense has been committed, which implies that the criminal offense has already been discovered in a certain way (Bajičić, Šikman, 2014: 453-465). Based on the Police report on the existence of the grounds for suspicion that a criminal offense has been committed, the Prosecutor shall decide whether to initiate an investigation.

The next issue, worthy of attention when talking about efficiency and achieving of goals of criminal proceedings - concerns the suspension or termination of the investigation. This issue is closely related to the right of the suspect or the accused to be brought before the court and to be tried without delay within the shortest possible and reasonable time (Article 13 paragraph 1). The law stipulates that the Prosecutor shall issue an order terminating the investigation if he/she considers there are no conditions for further prosecution, and will suspend the investigation when he finds that the state of affairs is sufficiently clarified to file an indictment (Article 225 paragraph 1), and if the investigation is not completed within six months of the issuance of an investigation order, the the Prosecution College shall take all necessary measures to complete the investigation (Article 225 paragraph 2).

In addition, the investigation does not only serve to collect material for the decision to terminate the proceedings or to file an indictment, but also, in the case of filing an indictment and presenting findings at the main hearing, to facilitate the main hearing by a preliminary investigation – by way of collecting the basic evidence, release the main hearing of redundant and useless material and duly check the allegations of the parties making the main hearing redundant, and to ensure the

13 Basis for suspicion, firstly, refer to the problems of establishing of existence of criminal offense in general, and secondly, to revealing of perpetrator and establishment of his guilt. Vodinelić, V. (1985). *op.cit*., pgs. 87-88.

14 The Police reaches the level of basis for suspicion through criminal activities it takes within its regular duties and tasks, by performing police job, search activities and prooving actions (for example, Articles 5 paragraph 1t, 5, 6, 7, 10 of the Law on Police and Internal Affairs of the Republika Srpska, Official Gazette of the Republika Srpska, Nos. 57/16 and 110/16).

accused's presence during the proceedings (Simović, Simović, 2014: 22). In order to be efficient, these activities must be realized within optimal time and shortest possible deadline, and must be of such extent to enable making of a lawful decision. Thus, not all the evidence and data that may be of use for making of verdict are collected in the investigation, but only those who are required to make a decision whether to terminate the proceedings or to file an indictment (Simović, Simović, 2014: 22). In this way, the criminal proceedings shall not only be efficient, but shall also limit the possibility of an omission in the course of an investigation that can make the evidence illegal, and thereby challenge the main criminal proceedings. In this respect, special responsibility lies with the Prosecutor as the Prosecutor is responsible for taking care of the lawfulness of investigation, including the conducts of authorized officials during the investigation (Pivić, 2017: 28).

After the conclusion of investigation, as the first stage of the preliminary proceedings, follows the prosecution procedure, as the second and final stage of the preliminary hearing, as the first stage of the criminal proceedings (Sijerčić-Čolić, et.al., 2005: 608). In order to complete the criminal proceedings in the most efficient manner, three procedural options are prescribed to complete it in a way that does not lead to holding of the main hearing. These are guilty plea, guilty plea agreement and issuance of a criminal order. In the first case, if the accused pleads guilty, the preliminary hearing judge shall refer the case to the judge, that is to the hearing panel for scheduling of the hearing to establish the existence of the grounds for deliberation on the guilty plea (Article 229 paragraph 2), and if the court accepts the guilty plea statement, the statement of the accused shall be entered into the record and it shall continue with the hearing for the determination of criminal sanction (Article 230 paragraph 2). In this way, the criminal proceedings are terminated without holding of the main hearing, which significantly contributes to its efficiency.

In addition to guilty plea, negotiations on the guilt before preliminary hearing judge, which may result in guilty plea agreement, is considered to be the most efficient way of conclusion of the criminal proceedings, which is characterized by the complete absence of the evidentiary proceedings (Simović, Simović, 2014: 98). Namely, the process of negotiating the conditions of guilty plea can be initiated by the parties and the defense attorney at all stages of criminal proceedings, and its ultimate goal is to conclude an agreement that primarily relates to the type and extent of criminal sanction (Sijerčić-Čolić, et.al., 2005: 622). This agreement is an advantage not only for the Prosecutor but also for the Defense Attorney (Simović, Simović, 2014: 100). Thus, this is a quick and cheap judgment: the agreement shall save the time it would spend by conducting regular criminal proceedings, and thereby it shall reduce the number of cases before the

court and leave enough funds for prosecution of perpetrators that represent more serious threat to society (Kiurski, Stanković, 2005: 559-580). If the court accepts the plea agreement, the statement of the accused shall be entered into the record and the hearing for imposing of criminal sanction provided for by the agreement shall continue (Article 231 paragraph 1), and the criminal proceedings shall be terminated by holding of the main hearing, at the same time achieving the purpose and aim of the punishment.

Finally, the efficiency of the criminal proceedings can also contribute to its termination by issuing a criminal order as a form of shortened or summary form of criminal proceedings conducted for minor offenses before the competent court and within which it is possible to impose an appropriate criminal sanction or measure without conducting the main hearing. In this way the criminal proceedings are rationalized, and quickly and efficiently completed, and is not less reliable than ordinary criminal proceedings. The legal requirements for the issuance of a criminal order are related to the criminal offense punishable by imprisonment for up to five years or a fine as the main punishment, and that the Prosecutor has sufficient legal evidence that provide a basis for the allegation that the suspect has committed the criminal offense he is charged with (Article 334 paragraph 1). If the accused pleads guilty and accepts the criminal sanction or measure proposed in the indictment, the judge shall first establish the guilt and then render the judgment imposing a criminal order in accordance with the indictment (Article 337 paragraph 2), which means that he cannot impose a criminal sanction the Prosecutor did not seek.

However, these possibilities have not been relieved of the objections that may be raised. It is justifiable to point out in the literature that the formation of simplified process forms faces two basic problems: recognition of those qualifications of process objects and subjects justifying the trivial forms, and finding the right measure of simplifying of the process form that corresponds to the peculiarities of process objects and subjects (Brkić, 2004: 166. Cited in: Radulović, 2013: 45–55). In addition, these complaints relate to the traditional judicial remedies, like proper establishment of factual background and determining of punishment in accordance with the established factual background (Bajović, 2015: 179-193). The request for the full and true determination of the factual background is replaced by a deliberation maxima which leaves the parties greater freedom as to the impact to which facts shall be established in the proceedings, having in mind that the recognition of the defendant and the consent of the parties with regard to certain facts eliminate the need for their substantiation (Bajović, 2015: 180). This applies in particular to the possibility of imposing of less severe penalties than those prescribed by law. Likewise, there is lack of elements of the second instance procedure, since there is no possibility to lodge an appeal against the judgment based on guilty plea agreement,

because the accused waives his right to trial and the possibility to file an appeal against the criminal sanction he shall be imposed.

If the parties and the Defense Attorney did not take advantage of the procedural possibility to conclude the criminal proceedings in one of the three ways in which the main hearing shall not be conducted, the procedure continues with the main proceedings. At this stage, conditions to ensure a trial within a reasonable time as one of the basic principles of criminal procedural law in general, are expressed. To this end, the process of reforming of criminal procedural legislation of the states in the region brought numerous novelties, one of the most important ones is a change of the structure of the main hearing, the content of the principle of its practical realization and regulation of different mode of process position of its main entities. Therefore, with the aim of the efficiency of the criminal proceedings, and in the function of practical realization of the principle of trial within a reasonable time – such norm must be adequately standardized and then adequately applied (Bejatović, Jovanović, 2015: str. 5). Without going into further analysis, it is evident that in the realization of goal set in this manner - in norming the structure of the main hearing, in norming the contents of its principles and process position of its main actors - there are numerous questions open, and realization of its goals depends on the manner of their solution (Bejatović, Jovanović, 2015: 5).

5. Conclusion

Efficiency of the criminal proceedings has become more actual as the criminal justice reform in Bosnia and Herzegovina has been ongoing. Thus, in the last 15 years, this is an unavoidable topic of scientific and professional public. Nevertheless, there seems to be significant discrepancies between expectations and reality. On one side, we have a normative and institutional basis that should provide, among other things, greater efficiency of criminal justice. Such efforts are the result of harmonization of criminal legislation with known standards in this area. Shortened procedures have been introduced, in particular the possibility of terminating the criminal proceedings, without a main hearing, through guilty plea agreement. Specialization was carried out within individual prosecutorial organizational departments, which would also have to make the criminal proceedings more efficient, especially in relation to more severe forms of crime. Knowledge of the protection of human rights have been strengthened, for example by affirming of the right to a fair trial within a reasonable time, followed by appropriate decisions of the court instances. There is no need to neglect a developed

framework on this issue set by the European Court of Human Rights, which is commonly used by domestic bodies.

On the other hand, the question of the state of affairs is raised when it comes to the efficiency of criminal justice. Although the dominant theoretical and legal framework for understanding the efficiency of criminal proceedings in our country (e.g. according to Bejatović, Simović, Škulić, Radulović, Đurđić and others), which under efficiency implies a quantitative (speed of proceedings) and a qualitative (legal decision) component, it seems that it is identified with the speed of criminal proceedings. Accordingly, no matter that the vast majority will accept the aforementioned concept of efficiency of criminal proceedings, it will manifest itself in practice through efforts to end the criminal proceedings as soon as possible, regardless of the quality of the court decision. There is a key difference in relation to expectations and reality when talking about efficient criminal proceedings. Hence, the quality of judicial decisions is of crucial importance for efficient criminal proceedings. Of course, it implies that this decision was reached within optimal period of time, that is, the time that was objectively necessary to resolve the criminal case without unnecessary delay. Likewise, it also understands adequate judicial staff, as well as the material assumptions necessary for the achievement of efficient criminal proceedings. These are the key components of efficiency: a quality standard, a high quality staff, and the fulfillment of material and technical requirements.

If it were linked to the current situation in Bosnia and Herzegovina, then it could be concluded that there is an adequate legislative framework. Of course, it can be further improved and it is the subject matter of constant administrative and legal analysis. The institutional aspects of efficient criminal justice, i.e. their analysis, indicate that there is a need for further strengthening of this component. Not only further training and specialization of staff has to be done, but it is also necessary to improve the issue of their mutual cooperation and relationship. This is what the efficiency depends on to a great extent, both in the individual stages and in the criminal proceedings as a whole. And last but not least, the creation of necessary material and technical conditions.

Literature

– Alidžanović, V., Musić, E. (2017). Sporazum o priznanju krivice - procesni i praktični aspekti studija slučaja, *Kriminalističke teme* 17(1-2/2017), 369-389.
– Bajičić, V., Šikman, M. (2014). Stepen sumnje kao konstitutivni element krivičnog postupka. U: *Optuženi i drugi krivičnopravni instrumenti državne reakcije*

na kriminalitet. (453-465). Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Bajović, V. (2015). Odmeravanje kazne i sporazum o priznanju krivičnog dela, *NBP - Žurnal za kriminalistiku i pravo*, 2/2015, 179-193.
- Bejatović, S. (2000). Mere za povećanje efikasnosti i pojednostavljenje krivičnog postupka. U: *Osnovne karakteristike Predloga novog jugoslovenskog krivičnog zakonodavstva,* (145-155). Beograd: Udruženje za krivično pravo i kriminologiju Jugoslavije.
- Bejatović, S. (2008). Nove tendencije u savremenoj nauci krivičnog procesnog prava i krivičnoprocesno zakonodavstvo Srbije, *Revija za kriminologiju i krivično pravo*, 46(3/2008), 3–40.
- Bejatović, S. (2009a). Pojednostavljene forme postupanja u krivičnim stvarima i njihov doprinos efikasnosti krivičnog postupka. U: *Alternativne krivične sankcije i pojednostavljene forme postupanja*, (77-105). Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Bejatović, S. (2009b). Načelo oportuniteta krivičnog gonjenja u nemačkom krivičnom procesnom pravu, U: *Oportunitet krivičnog gonjenja*, (125-144). Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Bejatović, S. (2010). Efikasnost krivičnog postupka kao međunarodni pravni standard. U: *Krivično zakonodavstvo Srbije i standardi Evropske unije,* (184-203). Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Bejatović, S. (2013). Pojednostavljene forme postupanja kao bitno obeležje reformi krivičnog procesnog zakonodavstva zemalja regiona. U: *Pojednostavljene forme postupanja u krivičnim stvarima regionalna krivičnoprocesna zakonodavstva i iskustva u primeni*. (11-31). Beograd: Misija OEBS-a u Srbiji.
- Bejatović, S. (2015a). Efikasnost krivičnog postupka kao međunarodni pravni standard i reforma krivičnog procesnog zakonodavstva Srbije (norma i praksa). *NBP - Žurnal za kriminalistiku i pravo* 20(2), 27-53.
- Bejatović, S. (2015b). Glavni pretres i njegov doprinos obezbeđenju suđenja u razumnom rokustr. U: *Glavni pretres i suđenje u razumnom roku - regionalna krivičnoprocesna zakonodavstva i iskustva u primeni.* (9-33). Beograd: Misija OEBS-a u Srbiji.
- Bejatović, S. (2017a). Međusobni odnosi i saradnja procesnih subjekata kao faktor efikasnosti otkrivanja i dokazivanja krivičnih dela. U*: Reformski procesi i poglavlje 23 (godinu dana posle) – krivičnopravni aspekti.* (291-315). Zlatibor: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Bejatović, S. (2017b). Kaznena politika i adekvatnost funkcionisanja pravnog sistema države, *Pravna riječ* 14(52), 443-479.

- Bejatović, S., Banović B. (2005). *Policija i pretkrivični i prethodni krivični postupak,* Beograd: Viša škola unutrašnih poslova.
- *Bejatović, S., Jovanović, I. (Ur.) (2015). Glavni pretres i suđenje u razumnom roku - regionalna krivičnoprocesna zakonodavstva i iskustva u primeni. Beograd: Misija OEBS-a u Srbiji.*
- Brkić, S. (2004). *Racionalizacija krivičnog postupka i uprošćene procesne forme*, Novi Sad: Pravni fakultet u Novom Sadu.
- Carić, S. (2015). Glavni pretres i njegov doprinos obezbeđenju suđenja u razumnom rokustr. U: *Glavni pretres i suđenje u razumnom roku - regionalna krivičnoprocesna zakonodavstva i iskustva u primeni.* (34-48). Beograd: Misija OEBS-a u Srbiji.
- Dimitrijević, D. (1971). *Krivično procesno pravo*, Treće prerađeno i dopunjeno izdanje, Beograd: Savremena administracija.
- Đurđić, V. (2008). Krivičnoprocesno zakonodavstvo kao normativna pretpostavka efikasnosti postupanja u krivičnim stvarima, U: *Krivično zakonodavstvo, organizacija pravosuđa i efikasnost postupanja u krivičnim stvarima*. (9–39). Zlatibor: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Đurđić, V. (2013). Osnovna načela krivičnog procesnog prava i pojednostavljene forme postupanja u krivičnim stvarima. U: *Pojednostavljene forme postupanja u krivičnim stvarima regionalna krivičnoprocesna zakonodavstva i iskustva u primeni*. (56-66). Beograd: Misija OEBS-a u Srbiji.
- Filipović, Lj. (2017). *Kvalitet optužnica i presuda u Bosni i Hercegovini kao faktor efikasnog procesuiranja krivičnih djela korupcije*. Sarajevo: Analitika – Centar za društvena istraživanja.
- Grubač, M. (2004). *Krivično procesno pravo – uvod i opšti deo*, Beograd: Službeni glasnik Republike Srbije.
- Ivičević, E., Novosel, D. (2004). Vrste i mjere kazne primjenjivane u instrumentu kaznenog naloga i njihov odnos prema izrečenim kaznama, *Hrvatski ljetopis za kazneno pravo i praksu* 11(2), 675-699.
- Jager, M., Šugman Stubbs, K. (2017). O potrebi za "unapređenjem efikasnosti krivičnog postupka" *Godišnjak Pravnog fakulteta u Sarajevu*, LX - 2017, 355-370.
- Kiurski, J., Stanković, B. (2005). Posebni krivični postupci i nove tendencije u savremenoj nauci krivičnog prava. U: *XLII redovno godišnje savetovanje Udruženja za krivično pravo i kriminologiju Srbije i Crne Gore*, (559-580): Zlatibor: Udruženje za krivično pravo i kriminologiju Srbije i Crne Gore.
- Kolaković-Bojović, M. (2013). Pojam efikasnosti krivičnog postupka- razumemo li ideal kome težimo? U: *Kriminal, državna reakcija i harmonizacija sa evropskim standardima*, (373-384). Beograd: Institut za kriminološka i sociološka istraživanja.

- Modly, D., Petrović, B., Korajlić, N. (2004). *Uvod u kriminalistiku*. Sarajevo: Fakultet kriminalističkih nauka.
- Omejec, J. (2008). *Vijeće Europe i Europska unija, institucionalni i pravni okvir*, Zagreb: Novi informator.
- Pivić, N. (2017). Koncept istrage prema krivičnoprocesnom zakonodavstvu Bosne i Hercegovine, *Anali Pravnog fakulteta* 19, 9-45.
- Radlovački, V., Kamberović, B., Radaković, N. (2008). Principi opšteg modela ocene efikasnosti i efektivnosti sistema menadžmenta kvalitetom podržane računarom. *Tehnika* 8(6), 7-12.
- Radolović, A. (2008). Zaštita prava na suđenje u razumnom roku: realna mogućnost, (pre)skupa avantura ili utopija? *Zbornik Pravnog fakulteta Univerziteta u Rijeci*, 29(1), 277−315.
- Radulović, D. (1997). Efikasnost krivičnog postupka i njen uticaj na suzbijanje kriminaliteta, *Jugoslovenska revija za kriminologiju i krivično pravo*, 2-3, 155-215.
- Radulović, D. (2002). *Krivično procesno pravo*. Podgorica: Pravni fakultet.
- Radulović, D. (2011). Efikasnost krivičnog postupka i prevencija kriminaliteta. U: *Krivično zakonodavstvo i prevencija kriminaliteta*, (125-137). Brčko: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Radulović, D. (2013). Pojednostavljene forme postupanja u krivičnom procesnom zakonodavstvu Crne Gore, U: *Pojednostavljene forme postupanja u krivičnim stvarima – regionalna krivičnoprocesna zakonodavstva i iskustva u primeni*, (45–55). Beograd: Misija OEBS u Srbiji.
- Roxin, C. (1998). *Strafverfahrensrecht*, C. H. Beck'sche Verlagsbuchhandlung, München.
- Sijerčić-Čolić, H., Hadžiomeragić, M., Jurčević, M., Kaurinović, D., Simović, M. (2005). *Komentari zakona o krivičnom/kaznenom postupku u Bosni i Hercegovini, Sarajevo:* Savjet/Vijeće Evrope i Evropska komisija.
- Šikman, M. (2010). Praktični problemi korišćenja indicija (osnova sumnje) u tužilačkoj istrazi – teorijsko razjašnjenje ključnih pojmova. U: *Pravo i forenzika u kriminalistici*, (89-104). Beograd: Kriminalističko-policijska akademija.
- Šikman, M., Bajičić, V. (2014). Efikasnost otkrivanja i dokazivanja krivčnih djela. *Pravna riječ,* 9(40), 285-310.
- Simović, M. (2009). Pojednostavljene forme postupanja u krivičnom procesnom zakonodavstvu Bosne i Hercegovine (zakonska rješenja i iskustva u dosadašnjoj praksi). U: *Alternativne krivične sankcije i pojednostavljene forme postupanja,* (195-223). Beograd: Srpsko udruženje za krivičnopranu teoriju i praksu.
- Simović, M. (2012). Uloga suda u utvrđivanju činjenica na glavnom pretresu - Regionalna komparativna analiza, U: *Savremene tendencije krivičnog*

procesnog zakonodavstva u Srbiji i regionalna krivičnoprocesna zakonodavstva (Normativni i praktični aspekti), (37–68). Beograd: Misija OEBS-a u Srbiji.
- Simović, M. (2015). Pravo na suđenje u razumnom roku u krivičnim predmetima u praksi Ustavnog suda Bosne i Hercegovine. U: *Glavni pretres i suđenje u razumnom roku - regionalna krivičnoprocesna zakonodavstva i iskustva u primeni,* (9-33). Beograd: Misija OEBS-a u Srbiji.
- Simović, M., Simović, V. (2014). *Krivično procesno pravo II.* Istočno Sarajevo: Pravni fakultet Univerziteta u Istočnom Sarajevu.
- Simović, M., Simović, V. (2016). *Krivično procesno pravo – uvod i opšti dio*. Bihać: Pravni fakultet Univerziteta u Bihaću.
- Škulić, M. (2009). *Krivično procesno pravo*, Beograd: Pravni fakultet Univerziteta u Beogaradu.
- Škulić, M. (2015). Krivično procesno zakonodavstvo Republike Srbije - normativni aspekt adekvatnosti ili neadekvatnosti državne reakcije na kriminalitet. U: *Suđenje u razumnom roku i drugi krivičnopravni instrumenti adekvatnosti državne reakcije na kriminalitet,* (41-75). Zlatibor: Srpsko udruženje za krivičnopravnu teoriju i praksu.
- Škulić, M., Ilić, G. (2012). *Novi Zakonik o krivičnom postupku Srbije – reforma u stilu "jedan korak napred, dva koraka unazad"*. Beograd: Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije.
- Tegeltija, M. (2005). Tužilačka istraga, *Bezbjednost, policija, građani*, 1(1), 162-169.
- Vasiljević, T. (1981). *Sistem krivičnog procesnog prava SFRJ*, Beograd: Savremena administracija.
- Vodinelić, V. (1985). *Kriminalistika – otkrivanje i dokazivanje*, Skoplje: Fakultet za bezbjednost i samozaštitu.
- Vujović, D. (1997). *Funkcija javnog tužioca u pretkrivičnom postupku,* Beograd.